

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2004-212-S - ORDER NO. 2005-146
DECEMBER 8, 2005

IN RE:	Application of Development Service, Inc. for)	ORDER RULING ON
	Approval of a New Schedule of Rates and)	RECONSIDERATION
	Charges for Sewerage Service Provided to)	AND OTHER MATTERS
	Residential and Commercial Customers in all)	
	Areas Served.)	

This matter comes before the Public Service Commission of South Carolina (the Commission) on two Petitions related to Order No. 2005-42, an Order granting an increase in rates and charges to Development Service, Inc. (DSI or the Company) for the provision of sewer services. The Petitions were filed by DSI and the Office of Regulatory Staff (ORS). Each party also filed a response to the other party's Petition.

DSI Petition

DSI filed a Petition for Rehearing and/or for Reconsideration of Order No. 2005-42. We deny the requests made in this Petition as follows.

DSI alleges that the Commission's Order fails to recognize the contract service revenue adjustment of \$27,120 by virtue of the receivable due to DSI from Midlands Utility, Inc. (Midlands) for the use of DSI's equipment. In particular, Midlands uses a Caterpillar backhoe and a Caterpillar generator owned by DSI. DSI and Midlands have determined the value of the equipment rental to be \$27,120, and DSI treated this amount as revenue on its application. DSI requests that the Commission recognize this revenue.

As noted by DSI, ORS witness Sharon Scott testified that she found no justification for recognizing this revenue. Ms. Scott did make several adjustments to the depreciation schedule to allocate costs of the equipment to Midlands and Bush River Utilities, Inc. (BRUI).

We deny this first portion of the Petition. As shown above, this equipment is currently allocated between DSI, BRUI, and Midlands based on usage and is included in rate base. Thus, DSI is recovering the cost of its equipment in rate base. This is consistent with our treatment of the matter in Order No. 2005-42. See Order No. 2005-42 at 8. The Company has not presented anything to persuade this Commission to change its finding.

The second portion of DSI's Petition alleges that the Commission erred in not approving the increase in the tap fee requested in the Company's Application. We disagree.

We would note that ORS witnesses stated that they could find no basis for the requested tap fee increase, and they urged the Commission to disallow the increase. DSI states, however, that the calculation shown in the Application and the responses to data requests found in the record of the case were enough evidence to justify granting the tap fee increase. Although the Company then recites the Schedule of Tap Fees set out in its Application, it points to no particular response to data requests. We disagree with DSI's argument that there is sufficient evidence presented for the increase.

The Commission determined in Order No. 2005-42 that the record contained insufficient evidence to increase DSI's tap fee. See Order No. 2005-42 at 27-28. Nothing

has been presented by the Company that would cause us to modify our position. Accordingly, this portion of DSI's Petition is also denied.

ORS Petition

The Office of Regulatory Staff filed a Petition for Rehearing or Reconsideration and Motion for Clarification. We grant reconsideration in part, and we grant the Motion for Clarification.

First, ORS alleges error in our holding that DSI must provide a \$100,000 bond by the end of BRUI's construction phase. ORS agrees with the Commission that the present performance bond on file is insufficient, but believes that the \$100,000 bond should be obtained immediately by the Company. ORS cites S.C. Code Ann. Section 58-9-720 to support its position. The statute states in part: "The commission shall, before the granting of authority or consent to any water or sewer utility regulated by the commission, for the construction, operation, maintenance, acquisition, expansion, or improvement of any facility or system, prescribe as a condition to the consent or approval that the utility shall file with the commission a bond with sufficient surety, as approved by the commission, in an amount not less than one hundred thousand dollars and not more than three hundred fifty thousand dollars payable to the commission and conditioned upon the provision by the utility of adequate and sufficient service within its service area...."

ORS also cites 26 S.C. Code Ann. Regs. 103-512.3, which states in part that: "Prior to operating, maintaining, acquiring, expanding or improving any utility system, for which Commission approval is required, the utility shall have on file with the Commission a performance bond with sufficient surety...."

Order No. 2005-42 requires DSI to post a \$100,000 performance bond by the completion of construction of the wastewater treatment facility of BRUI. ORS alleges that it may be difficult to determine an actual date for completion of construction of the treatment facility. Based upon testimony in the record, the Commission determined that DSI could not immediately obtain a \$100,000 performance bond. Thus, the Commission set the bonding requirement by the completion of construction of the treatment plant. We believe that requiring DSI to immediately post a \$100,000 performance bond, which it could not obtain, may result in a shut down of the system. As there is currently no alternative provider of sewer service for DSI customers, the Commission has determined that a shut down of the DSI system would not be in the public interest. No evidence has been presented to change the Commission's determination concerning the ability of DSI to obtain a performance bond immediately or the harm to the public interest if the system were shut down.

The Commission, however, agrees with the ORS that the construction completion date is uncertain. We therefore now hold that DSI shall post a \$100,000 performance bond by the earlier of one year from the date that the Department of Health and Environmental Control (DHEC) issued a construction permit to Bush River Utilities, Inc. (BRUI) for the treatment facility, which is November 29, 2005, or the date on which BRUI applies to DHEC for final operational approval of the treatment facility. We believe that this gives more certainty as to when the Company must post the bond, while at the same time recognizing the financial difficulties currently faced by this Company as well as its difficulty in obtaining the required bond.

While the Commission recognizes, as noted by the ORS, that the posting of the bond is for the protection of the public, we do not believe that forcing the owners of the utility into a detrimental financial position in order to obtain the bond is the proper thing to do, nor in the public interest. We believe that it is in the public interest to keep the utility running, while at the same time ordering the utility's owners to come into compliance with the bonding statute by a date in the near future. Only by balancing the current financial integrity of the utility with the ultimate increase in protection that an augmented bond will provide, can the public interest be best served.

Further, as pointed out by ORS, pursuant to the provisions of 26 S.C. Code Ann. Regs. 103-501.3, the Commission can, and hereby does, waive 26 S.C. Code Ann. Regs. 103-512.3 to the extent that it requires an appropriate bond to be provided **prior** to operating the Company's utility system. The Commission believes that compliance with this regulation would create unusual difficulty for the Company as described above.

In contrast to its authority to waive its own regulations upon an appropriate finding, the Commission fully agrees with ORS that it has no authority to waive the statutory requirements of S.C. Code Ann. Section 58-5-720 (Supp. 2004). Indeed, it is not doing so in this ruling. Unlike the provisions of 26 S.C. Code Ann. Regs. 103-512.3, which require appropriate bonding **prior** to operation of a utility system, S.C. Code Ann. Section 58-5-720 has no such prohibition. Rather, the statute requires that, before granting consent to operate a treatment facility, the Commission prescribe as a condition to its consent that the utility **shall** file a bond with sufficient surety. The Commission's order requires that such a bond be filed by the Company, and additionally sets out the

specific amount required. By this current order, the Commission sets a date certain by which the Company **shall** file such a bond. Accordingly, the reconsideration request of ORS as to the bonding requirement is granted in part by establishing a date certain in the near future for the Company to obtain the bond.

We also grant that portion of the ORS Petition that requests clarification of its audit responsibilities prior to the Company's implementation of Phase-II rates in this case. Accordingly, we hereby set the following parameters for an audit:

- The Company must certify to the Commission and to ORS that it has completed construction at Bush River Utilities, Inc., has met all of the other requirements and that the Company is ready for the audit.
- The ORS should concentrate on the expenditures made for plant upgrades. The Commission does not envision a re-creation of the whole case (audit of revenues, expenses, calculation of operating margin, etc.). ORS must determine whether the company has expended at least \$932,278 in plant upgrades and that the new plant is complete and in service.
- ORS must certify that the bonding requirements have been met.
- ORS must certify that the company is using the NARUC chart of accounts to ORS's satisfaction.
- ORS must certify that the company is in compliance with all DHEC requirements.
- ORS is given sixty (60) days from the date that ORS commences the audit to complete its audit and file a report with the Commission.

When ORS certifies to the Commission that the Company has met all of the conditions of Order No. 2005-42, Phase-II rates can be placed into effect. Regardless of when DSI notifies the ORS to perform the audit, the ORS must certify that the bonding requirement has been met no later than November 29, 2005.

Pursuant to the foregoing, we make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Both DSI and ORS have filed Petitions seeking different forms of relief in this case including reconsideration, rehearing, and/or clarification.

2. DSI's Petition is denied. DSI is recovering the cost of the disputed equipment in rate base. Further, there is insufficient information in the record to support the Company's proposed increase in tap fees.

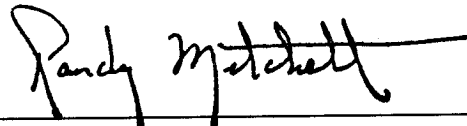
3. ORS's Petition for Reconsideration is granted in part, and its Motion for Clarification granted.

4. We agree with ORS that a time certain in the near future should be set for the Company to obtain the required \$100,000 bond. Accordingly, we hold that the performance bond must be furnished as described in the text above.

5. We grant clarification and set out parameters for the ORS audit of the Company as described above.

6. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Randy Mitchell, Chairman

ATTEST:



G. O'Neal Hamilton, Vice Chairman

(SEAL)